Does the "White Slave Traffic Act" Apply to a Man Who Transports a Woman from One State to Another for the Purpose of Having Sexual Intercourse With Such Woman Himself, There Being No Commercial Element in the Transaction?

2405

No. ~~2045~~

IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

F. DREW CAMINETTI,
Plaintiff in Error,

vs.

THE UNITED STATES OF AMERICA,
Defendant in Error.

ORAL ARGUMENT OF J. A. COOPER ON BEHALF OF PLAINTIFF IN ERROR.

Filed this.....*day of November, 1914.*

FRANK D. MONCKTON, Clerk

By.....*Deputy Clerk.*

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Preliminary Statement as to the Facts.

The defendant was indicted for transporting and causing to be transported "in interstate commerce from Sacramento, in the State of California, to Reno, in the State of Nevada, over the lines of the Southern Pacific Railroad, a certain girl, Lola Norris, for an immoral purpose, to wit, that she should become the concubine and mistress of defendant". He was found guilty upon this count of the indictment, the jury returning a verdict of not guilty upon every other ground. The evidence entirely frees the defendant from any imputation that he transported, or caused to be transported, the girl Lola

Norris for the purpose of placing her in a house of prostitution, or for any other purpose than for his own pleasure, and her pleasure, and their personal relations with each other. Lola Norris, the prosecutor's witness, testified, "Mr. Caminetti did not in any of these conversations, propose to me that I should go from Sacramento to Reno for the purpose of having sexual intercourse with him. He never did propose that I should go from Sacramento to Reno for the purpose of being his mistress." The trial Judge, in passing sentence, stated that the offense fell "below the deliberate traffic in human souls,—that is, inducing girls to enter, or deliberately putting them into houses of prostitution for purposes of gain. You are free from any such imputation arising from the evidence, and I cannot, therefore, assume that such idea ever entered into your consideration". The Court further stated in passing sentence, "If the question of my power were a clear one, I would have a very strong inclination to save you from the public obloquy that comes from incarceration in the penitentiary."

Nevertheless, the defendant was sentenced to a term of 18 months in the Federal Penitentiary and to pay a fine of $1500.00. From the judgment, this appeal is prosecuted. We call the Court's particular attention to the fact that the acts of defendant in this case would not constitute a crime under the laws of this State, nor under the laws of any State in the Union. He would be guilty of no crime under

the common law, nor under the civil law. He would be guilty of no crime under the law of any civilized country. No such crime was ever imputed to Lord Nelson and Lady Hamilton, to Pericles and Aspasia, or to Victor Hugo, and the faithful and trusted companion of his pleasures and comforter in his sorrows. Therefore, I desire to earnestly and carefully call the attention of the Court to the statute under which this defendant was convicted and to the legal interpretation thereof.

The Statute Which it is Claimed Has Been Violated By this Defendant.

The Act of June 25, 1910, called the "White Slave Traffic Act", provides as follows:

> "That any person who shall knowingly transport or cause to be transported, or aid or assist in obtaining transportation for, or in transporting, in interstate or foreign commerce, or in any Territory or in the District of Columbia, any woman or girl for the purpose of prostitution or *debauchery,* or for any other immoral purpose, or with the intent and purpose to induce, entice, or compel such woman or girl to become a prostitute or to give herself up to debauchery, or to engage in any other immoral practice; or who shall knowingly procure or obtain, or cause to be procured or obtained, or aid or assist in procuring or obtaining, any ticket or tickets, or any form of transportation or evidence of the right thereto, to be used by any woman or girl in interstate or foreign com-

merce, or in any Territory or the District of Columbia, in going to any place for the purpose of prostitution or debauchery, or for any other immoral purpose, or with the intent or purpose on the part of such person to induce, entice, or compel her to give herself up to the practice of prostitution, or to give herself up to debauchery, or any other immoral practice, whereby any such woman or girl shall be transported in interstate or foreign commerce, or in any Territory or the District of Columbia, shall be deemed guilty of a felony, and upon conviction thereof shall be punished by a fine not exceeding five thousand dollars, or by imprisonment of not more than five years, or by both such fine and imprisonment, in the discretion of the court."

(See Act in full, appendix to opening brief.)

In the determination of the question as to whether or not the defendant is guilty under the Act, the subject may be divided logically into the following heads:

First:

Was it the intention of Congress that the Act should apply to a personal escapade?

Second:

What is the legal interpretation of the Act?

Third:

Has the Act been held to apply to a case like this by the Supreme Court of the United States?

These we will take up in the order named.

FIRST: WAS IT THE INTENTION OF CONGRESS THAT THE ACT SHOULD APPLY TO A PERSONAL ESCAPADE?

Historical Development of the Act.

In this connection, the historical development of the law in connection with crimes committed by persons or corporations transporting women for the purpose of prostitution may be interesting. The first law on this subject was passed in March, 1875 (18 Stat. L. 477; 1 U. S. Comp. St. pp. 1286-7). This Act made it a felony to knowingly and willfully import women into the United States for the "purpose of prostitution". It was superseded by the Act of March, 1903 (32 Stat. L. 1213, 1905 Supp. to U. S. Comp. Stat. 276). The latter Act contained the principal provisions of the first, but was broader in its scope. It included "any woman or girl". It also left out the words "knowingly and willfully". The Act, however, remained in principle the same as before, its object being to prevent the importation of any woman or girl for the "purpose of prostitution". The penalty remained the same. Both these Acts were repealed and superseded by the Act of February 20, 1907, entitled "An Act to Regulate the Immigration of Aliens into the United States" (34 Stat. L. 898-1907 Supp. U. S. Com. Stats. 392). The latter Act made it a felony to import any woman or girl into the United States "for the purpose of prostitution or for any other immoral purpose". This Act was construed by the United States Supreme Court in *U. S. v. Bitty* (208 U. S. 572, 57 L. Ed. 553), and was held to apply to the defend-

ant in that case who had feloniously imported into the United States a certain alien woman for an immoral purpose, to wit, for the purpose of living with him as his concubine or mistress. The Court held, that, looking at the statute and the words in connection with the context, the true intent of the Act included such a case. In that case no question as to interstate commerce was involved, and the Court placed its decision squarely upon the proposition that Congress had power to prohibit the importation into the United States of any alien for an immoral purpose. The Court was dealing with a statute, the object of which was to exclude undesirable aliens from entering the United States, and construed accordingly so as to effect its object. The subject was "immigration", exclusively within the jurisdiction of Congress. Congress, of course, has power to prescribe the persons who shall be admitted into the United States under the immigration laws. Another section of the Act of February 20th, 1907, made it an offense to harbor or maintain any such alien in any house of prostitution for a period of three years after she shall have entered the United States. In *Jos. Keller v. U. S.* (213 U. S. 138, 53 L. Ed. 737), the Court held that the latter provision of the Act was void, and that Congress was without power to pass such law for the reason that the offense came within the accepted definition of police powers which is reserved to the states. Both these decisions appear right upon the plainest constitutional principles. In the first it

was merely held that Congress had power, under the express provision of the Constitution, to prohibit the importation of alien women into the United States for the purposes of prostitution or other immoral purpose. In the second, that Congress had no power to legislate as to offenses coming within the usual police powers of the State as to aliens after they had entered the United States. Neither of them has any particular bearing in the case at bar, nor does either of them discuss the question as to what is *interstate commerce*.

Before the statute under discussion was passed, there had been much agitation in the public press and in the various public bodies as to the suppression of the "White Slave Traffic". It was represented that one Alphonse Dufaur, a Frenchman, was at the head of a syndicate that had for the past ten years been importing into the United States two thousand women per year and that during one year, in Chicago alone, the syndicate had cleared one hundred two thousand dollars ($102,000) by such importation of alien women. Accordingly, in July, 1902, at what is known as the "Paris Conference", at which all the principal European governments were represented, an agreement was entered into for the suppression of the "White Slave Trade". The United States was not a party to said conference, but in June, 1905, the President of the United States, in conformity with a resolution of the Senate, issued a proclamation declaring adherence on the part of the United States to the Paris Confer-

ence. It was, therefore, in this state of the public mind, and under these conditions, that the Act named "The White Slave Traffic Act" was introduced into the Senate of the United States, and considered in the "Committee of the Whole".

Reports of Committees as to the Purposes of the Act.

The purpose of the White Slave Traffic Act is indicated by the name expressly given to it by Congress—to suppress that traffic so far as conducted through the medium of interstate and foreign commerce. It was not intended for the suppression of immorality in general, that purpose being expressly disavowed by its framers.

Thus both the House and Senate Committees, in reporting the bill to their respective Houses, said (the Senate Committee adopting the language of the House Report). (H. Rep. No. 47, S. Rep. No. 886, 61st Cong., 2nd Sess.):

> "A material portion of the legislation suggested and proposed is necessary to meet conditions which have arisen within the past few years. *The legislation is needed to put a stop to villainous interstate and international traffic in women and girls. The legislation is not needed or intended as an aid to the States in the exercise of their police powers in the suppression or regulation of immorality in general. It does not attempt to regulate the practice of voluntary prostitution, but aims solely to prevent panderers and procurers from compelling thousands of women and girls against their will and desire to enter and continue in a life of prostitution.*"

The Committee Reports above referred to also describe with great particularity the evil intended to be remedied by the Act, in part as follows:

> "The evil, as a present-day existing evil of widespread dimensions which has arisen, has been given careful attention by the representatives of most of the civilized nations of the world, and has been made the subject of an international agreement. Thousands of public spirited citizens have combined in various National and State organizations for the purpose of lending their aid in its suppression. The white slave traffic has been so prevalent that prosecuting officers, both State and Federal, even under inadequate and insufficient laws, have been able to secure many notable convictions. It is an evil which many State legislatures have attempted to regulate within the past two or three years by means of the enactment of State statutes * * * the evil is one which cannot be met comprehensively and effectively otherwise than by the enactment of Federal laws.
>
> "Investigations conducted by Government agents disclose the fact that a national and international traffic exists in the buying, selling, and exploitation of women and girls for immoral purposes. The traffic has come to be known the world over as 'The White-Slave Trade'. It is referred to by the Paris conference as 'The Trade in White Women'.
>
> "There are few who really understand the true significance of the term 'white-slave trade'. Most of those who have given only casual thought to the subject have the impression that women who lead immoral lives in public houses are there voluntarily, either because they are attracted by the excitement of such a life, or because they have found it an easy way of earning a living. In many cases such is not the fact.

The results of careful investigations into this subject disclose the fact that the inmates of many houses of ill-fame are made up largely of women and girls whose original entry into a life of immorality was brought about by men who are in the business of procuring women for that purpose—men whose sole means of livelihood is the money received from the sale and exploitation of women who, by means of force and restraint, compel their victims to practice prostitution. These investigations have disclosed the further fact that these women are practically slaves in the true sense of the word; that many of them are kept in houses of ill-fame against their wills; and that force, if necessary, is used to deprive them of their liberty.

"The characteristic which distinguishes 'the white-slave trade' from immorality in general is that the women who are the victims of the traffic are unwillingly forced to practice prostitution. The term 'white-slave' includes only those women and girls who are literally slaves —those women who are owned and held as property and chattels—whose lives are lives of involuntary servitude; those who practice prostitution as a result of the activities of the procurer, and who, for a considerable period at least, continue to lead their degraded lives because of the power exercised over them by their owners. In short, the white-slave trade may be said to be the business of securing white women and girls and of selling them outright, or of *exploiting them for immoral purposes.* Its victims are those women and girls who, if given a fair chance, would, in all human probability, have been good wives and mothers and useful citizens.

"The preamble of an existing international agreement on this subject states that the several governments 'being desirous to assure to women

> who have attained their majority and are subjected to deception or constraint, as well as minor women and girls, an efficacious protection against the criminal traffic known under the name of trade in white women ("Traite des blanches") have resolved to conclude an arrangement with a view to devise proper measures to attain this purpose'."

And said reports contain this final statement as to the purpose of the Act:

> "It is the purpose of the proposed laws, in so far as it may be possible for Congress to do so, to protect women and girls against *this criminal traffic* by providing for the punishment of *those engaged in that traffic* and by regulations established by the act."

The Bill Was Not Changed in Any Important Particular After Being Introduced.

It may be well to say, in reply to the assertion which has been occasionally made that the bill as reported to the House was afterwards materially changed, so that the statements made in the House Report as to the scope of the bill are not applicable, that that assertion is wholly without foundation. The bill as reported back to the House is set out in full on pages 804 and 805 of Vol. 45, Pt. 1, of the Congressional Record, together with the amendments reported by the Committee, and an examination of the bill as reported back to the House shows that it is identical in every substantial particular with the Act as finally passed, and at that time, and when introduced, it contained the words

"or for other immoral purposes" which have given rise to the doubt as to its scope. Neither in the House nor the Senate was the language of the bill changed in the respects referred to, and an examination of the debates on the bill show that it was discussed entirely from the standpoint of the suppression of the white-slave traffic (45 Cong. Rec., Pt. 1, 804-823, Pt. 2, 1030-1041). The bill passed the Senate as it came from the House, without amendment and without debate (45 Cong. Rec., Pt. 8, p. 9037).

The Reports of the Committees Show That They Regarded the Bill as Dealing Only With Commercialized Sexual Immorality.

Notwithstanding the fact that the bill as reported to the House contained the inhibition upon the transportation of women and girls "for the purpose of prostitution or debauchery *or for any other immoral purpose*", the Committee on Interstate and Foreign Commerce which reported it, through Mr. Mann, generalized that language as referring to "prostitution", meaning thereby commercialized sexual immorality. Thus the Committee said (H. Rep. No. 47, supra):

> "*Police Powers of States Not Interfered With.*
>
> "It is not the purpose of the bill to interfere with or usurp in any way the police powers of the States. The bill reported does not endeavor to regulate, prohibit, or punish *prostitution* or the keeping of *places* where *prostitution* is indulged in. The prohibition of *prostitution and other immoral practices* and the pun-

ishment of the *practice of prostitution or the keeping of houses of ill-fame, or other immoral places,* in the several States are matters wholly within the powers of the States and the Federal Government has no jurisdiction over those subjects. On the other hand, it has been shown in the investigation relating to the *'white-slave traffic'* that persons engaged in *that business* in some of the large cities feel quite free to engage in the *traffic* as between the States, when they hesitated about engaging in the *traffic* wholly confined to one State.

"*Provisions of the Bill.*

"Most of the provisions of the bill are based upon the power of Congress over Interstate and Foreign commerce. In the second section of the bill it is made a crime for any one to knowingly transport in interstate or foreign commerce any woman or girl for the *purpose of prostitution,* or for the purpose of inducing, enticing, or compelling a woman to become a prostitute; and in the same section it is also a crime for any one to knowingly procure a ticket to be used by a woman in interstate or foreign commerce going to a place for the *purpose of prostitution,* whereby such woman shall be actually transported in interstate or foreign commerce, or in any Territory, or the District of Columbia.

"Section 3 of the bill makes it a crime for any person to knowingly persuade, induce, entice, or coerce any woman or girl to go from one State to another for the *purpose of prostitution,* and who shall thereby knowingly cause such woman to go or be transported as a passenger upon the line of any common carrier in interstate or foreign commerce.

"Section 4 applies only to a girl under the age of eighteen years, and is practically the same as section 3, except that it makes a higher

> penalty apply to the crime of misleading a girl under 18 *to become a prostitute* and transporting her in interstate commerce *for that purpose.* The provisions of section 2 of the bill make the crime, first, to knowingly transport, and, second, to knowingly furnish a passenger ticket for transportation for the *purpose of prostitution,* when accompanied by the use of such ticket in interstate or foreign commerce. Section 3 makes the crime to knowingly persuade, induce, entice, or coerce a woman into *prostitution* and thereby cause her to go and to be carried or transported as a passenger in interstate or foreign commerce."

The statement by the House of the "Provisions of the Bill" just quoted was also adopted by the Senate Committee on Immigration in reporting the bill after it came from the House (45 Cong. Rec., Pt. 8, pp. 9037, 9038).

It is clear from the Committee reports referred to, as well as from the debates in the House, that it was understood by all that the bill only dealt with the white-slave traffic and those engaged therein, and that it only undertook to inhibit the transportation of women or girls in interstate or foreign commerce with the intention that they should engage or continue in lives of ill-fame, that is, become prostitutes, the words "debauchery or for any other immoral purpose", or as they otherwise appear in the Act, "to give herself up to debauchery, or to engage in any other immoral practice" being used to cover all phases of a life of shame—of commercialized sexual immorality.

To hold that the Act extends beyond this and applies to ordinary instances of fornication and adultery, would be to pervert its meaning and extend the Act to matters of general morality which was not only not the intention of Congress to reach, but which the legislative committees in charge of the bill expressly disavowed any intention of reaching. As to the suppression of the white-slave traffic all the members of Congress were practically of one mind. The only question was as to the power of Congress to accomplish that object through a regulation of interstate commerce. But there is no suggestion whatever in the legislative history of the Act of any intention to regulate immorality in general. As to the advisability of the Federal Government undertaking to enter that field, opinions would probably have differed. But any discussion of that matter was precluded by the express disavowal of the legislative committees in charge of the bill of any such purpose.

It is to be noted that the Act constituted a new departure so far as the subject of interstate commerce was concerned. Theretofore the Federal Government had not undertaken to regulate matters of this kind, although conducted through the medium of interstate commerce, and there was undoubtedly a general reluctance in Congress to make regulations upon the general subject of sexual immorality, theretofore left to be dealt with by the State. Hence the disavowal of any such purpose in the Committee Reports above quoted. It was only

because the white-slave traffic had, as Congress believed, assumed such alarming proportions, that this legislation was enacted to remedy that particular evil.

Properly Construed the Language of the Act Is Limited to the White Slave Traffic—Commercialized Sexual Immorality.

Examining the language of the statute itself, and considering the same in the light of the history and purpose of the Act as above set forth, any doubt as to its meaning is easily resolved.

The most general provision of the Act is the first provision of section 2, which penalizes the transportation in interstate and foreign commerce of women and girls "for the purpose of prostitution or debauchery, or for any other immoral purpose". Yet it is manifest at once that the words "prostitution" and "debauchery" both imply a life of immorality, and not simply a sporadic act or acts of sexual intercourse, and the words "or for any other immoral purpose" must be construed to mean similar practices, under the rule of *ejusdem generis,* especially where as here the declared purpose of the Act and the evil to be remedied requires that construction.

But the purpose of the Act becomes clearer as we proceed. Section 2 continues—"or with the intent and purpose to induce, entice, or compel such woman or girl to become a prostitute or to *give*

herself up to debauchery, or to engage in any other immoral *practice.*"

It is clear from this language that Congress was denouncing the acts of those who, through the medium of interstate and foreign transportation should induce, entice or compel women or girls to give themselves up to *lives* of prostitution, debauchery and other sexual immorality; to engage in such practices as a *pursuit, calling or business.*

In section 3 of the Act, similar expressions are used, the language with reference to the intent and purpose on the part of the person bringing about the transportation being that "such woman or girl *shall engage* in the *practice* of prostitution or debauchery, or any other immoral *practice.*"

So, in section 4 of the Act, referring to the inducement or coercion of girls under 18 years of age, the purpose and intent denounced is that "she shall be induced or coerced *to engage in* prostitution or debauchery, or any other immoral *practice*".

Furthermore, it is to be observed that criminality arises from the purpose and intent with which a woman or girl is transported. Ordinarily, no one but a "panderer" or "procurer" would cause or induce a woman or girl to go from one State to another, etc., for the purpose of *engaging* in prostitution or debauchery, or other immoral practices. It will be remembered in this connection that the Committee Reports stated the statute was aimed *solely* at panderers and procurers.

So also section 6 of the Act, which contains provisions for carrying out the international agreement for the suppression of the white-slave traffic, has reference entirely to alien women or girls leading lives of ill-fame in this country—to commercialized vice. That section makes it the duty of the Commissioner General of Immigration:

> "to receive and centralize information concerning the procuration of alien women and girls with a view to their debauchery, and to exercise supervision over such alien women and girls, receive their declarations, establish their identity, and ascertain from them who induced them to leave their native countries, respectively; and it shall be the duty of said Commissioner-General of Immigration to receive and keep on file in his office the statements and declarations which may be made by such alien women and girls, and those which are hereinafter required pertaining to *such alien women and girls engaged in prostitution or debauchery* in this country, and to furnish receipts for such statements and declarations provided for in this act to the persons, respectively, making and filing them".

Said section 6 then provides:

> "Every person who shall keep, maintain, control, support, or harbor in any house or place *for the purpose of prostitution or for any other immoral purpose,* any alien woman or girl within three years after she shall have entered the United States from any country, party to the said arrangement for the suppression of the white-slave traffic, shall file with the Commissioner-General of Immigration a statement in writing setting forth the name of such alien woman or girl, the place at which she is kept,

> and all facts as to the date of her entry into the United States * * *".
>
> Note the use of the words "for other immoral purposes" in this section in connection with houses of ill-fame.

Finally, section 8 of the Act presents the most unusual spectacle of Congress giving a specific name to this legislation, by saying that it shall be known as "The White-Slave Traffic Act".

Looking at the whole Act, therefore, in the light of its history, its declared purposes and limitations, and its given name, it is manifest that Congress was aiming therein simply to protect the actual or prospective victims of the white-slave traffic, and that the Act has no application to the ordinary instances of sexual immorality where no element of the white-slave traffic is involved.

Scope of the Act as Indicated by the Debates in Congress.

As stated above, the bill was reported to both Houses as dealing only with the subject of the white-slave traffic, and as not applying to the subject of immorality in general.

The debate in the House on the bill (it was not debated at all in the Senate) was confined to the constitutional phases of the matter, it being claimed that the regulation of prostitution was a matter entirely for the States. On the other hand the proponents of the bill contended that where white-slave traffic was conducted through the medium of interstate commerce, i. e., involved transportation

between the States, it became a subject of Congressional regulation to the extent of prohibition because of its invidious nature.

Even the opponents of the bill did not claim that it applied to other than those engaged in the white-slave traffic, but the bill was debated by all as dealing only with the subject of commercialized vice—"prostitution", as reported by the Committee in charge thereof.

The following extracts show the general understanding in the House as to the scope of the bill.

45 Cong. Rec., Pt. 1, p. 812:

> "*Mr. Richardson:* This bill does not punish the alien woman, or any other woman, for being transported from one State to another, does it?
>
> *Mr. Sims:* Do you desire that it should?
>
> *Mr. Richardson:* I am asking you if it does. Yet you punish the man who aids the woman. You punish him for aiding a crime that you do not punish her for committing.
>
> *Mr. Sims:* It is written in a book, with which the gentleman from Alabama is very familiar, that 'the love of money is the root of all evil'. Now, what is the man procuring this woman for? What does he take her from one State to another for? For what purpose does he bring her from a foreign country? To make money. To make merchandise of a human soul. Which is the more evil, the deluded, deceived, imprisoned soul that is being carried from one State to another by that scoundrel or that scoundrel himself? The poor deluded female perhaps would not be able to make the trip were it not for the demon, in human form, who is furnishing money to carry her there, to sell her soul and body into hell, in order that

he may have a few more dollars to put in his unholy pocket.

Mr. Richardson: The State would punish them both.

Mr. Sims: As I was starting to say, was there ever any remedial legislation proposed against any evil that those whom it was intended to reach were not the first to say, 'You cannot execute this law, you cannot carry it out, it is impractical. If they do not object to the law why are they so anxious that it shall be effective when passed? Whom are we higgling in favor of? A class of importers, procurers, who are bringing innocent women and girls from foreign countries, and from one State to another, to engage in that which damns both soul and body, all for the sake of money; and the meanness which illustrates the character of the men who engage in this traffic is that they do not even divide with the poor woman what they get from the sale of them. They bring a woman here and immure her in a den. They take every rag of her street clothes away from her, and dress her in a way that she does not dare go out on the street. If she did she would be arrested. Then, when this Congress offers to pass legislation to prevent a horror which the devil would be ashamed of, why should we higgle over a doubtful question of possible constitutional construction by the courts in the future?

This shows that, as above pointed out, all the provisions of the bill—those relating to interstate transportation as well as those contained in section 6 relating to "the procuration of alien women and girls with a view to their debauchery", has reference to the same class of persons—procurers and

panderers—the active agents of commercialized sexual immorality.

Representative Adamson, who opposed the bill on the ground that it was unconstitutional, said (45 Cong. Rec., Pt. 2, pp. 1032, 1033):

> "It will be observed that no attempt is made in either bill to prevent or punish prostitution. It will be observed that immorality in transit, on the cars or other vehicles, is not prohibited at all. If the bill is constitutional, that provision would have been constitutional. It may be observed that only buying a ticket for a woman who is going to another State for prostitution is prohibited. There is no attempt to prohibit a vile man from buying a ticket to be used by himself or another vile man for transportation into another State for the purposes of immorality. If there is any sense in that part of the bill, these provisions ought to be included, but the chief points to be noticed are these: First, these provisions are liable to furnish boundless opportunity to hold up and blackmail and make unnecessary trouble, without any corresponding benefits to society. Second, you cannot convict a man for buying a ticket unless you prove the purpose. The only way you can prove the purpose is by following the woman and by proving the prostitution. If you can prove the prostitution, you can accomplish your purpose under the State laws. Oh, they say, but a State cannot pass and enforce a law to prohibit a man from buying a ticket to send a woman into another State for an immoral purpose. In the first place, it is unnecessary to pass such a law. * * * Now, the present proposition is that a general ticket unlimited to the use of any person shall be tabooed and the man shall be imprisoned for buying it if it is to be used by a woman to go into another State for the purpose of prostitution."

Ib., p. 1035:

"*Mr. Peters:* Mr. Speaker, the considerations which prompt the support of this bill are so widespread and its objects are so well understood and meet with such universal approval that no explanation or repetition of them need be made of them to this House.

The bill aims to aid in the suppression of the white-slave traffic by making it a felony to purchase interstate transportation for any woman going to a place for purposes of prostitution. The act, in section 6, also compels all keepers of disorderly houses who have in them alien women of less than three years' residence in this country to file a report of such women with the Commissioner-General of Immigration.

The traffic which this bill seeks to suppress has reached such proportions that an international conference has been held for its consideration, and its conditions and extent in this country have been called to public attention by the report of the Commissioner-General of Immigration, both for the years 1907 and 1908, and by the recommendations of the Immigration Commission of December 10, 1909."

Ib., p. 1037:

Mr. Saunders: Mr. Speaker, this bill has a most meritorious purpose, and rests upon the well-established power of Congress to regulate interstate and foreign commerce.

This power is now called into exercise, in an effort to break up a villainous interstate and international traffic in innocent girls and women who are in many cases induced to leave home under specious promises of steady employment at remunerative wages, only to find themselves in the result, deprived of their liberties and compelled to lead vicious and im-

> moral lives, under conditions of restraint and compulsion, which have been aptly and universally styled, 'white slavery.' "

In this case it does not appear, when taking the Act by its four corners, the reports made to the two houses of Congress, the debates in Congress in regard to the bill, that it ever entered the mind of the legislature to make an Act like that of which the defendant is charged, a criminal offense. We apprehend that it never entered the minds of the framers of the Constitution that interstate commerce would ever be attempted to be construed so as to include the mere paying of the railroad fare of one lover by another; such being a matter which exclusively concerns the State in which the individuals reside. If such laws should be passed, and if in this great age of reform such matters should be prohibited, it surely should be by the State legislature, and that the time of the United States courts and of the United States District Attorneys should not be taken up in attempting to ferret out and punish any particular or occasional violation of the moral law by individuals.

SECOND: THE LEGAL INTERPRETATION OF THE ACT AS TO THE ALLEGED CRIME OF WHICH THE DEFENDANT STANDS CONVICTED.

It seems plain that interstate commerce means the transporting of property in commerce or an exchange of commodities, or, as Judge Field said

in *County of Mobile v. Kimball* (102 U. S. 691, 26 L. Ed. 238):

> "Commerce with various countries and among the states, strictly considered, consists in intercourse and traffic, including in these terms navigation and the transportation or transit of persons and property, as well as the purchase, sale and exchange of commodities."

The Supreme Court of the United States said in the license cases, 5th How. 504:

> "That which does not belong to commerce is within the jurisdiction of the police power of the state, and that which does belong to commerce is within the jurisdiction of the United States."

In the trade mark cases, 100 U. S. 96, the Court said:

> "When, therefore, Congress undertakes to enact a law which can only be valid as a regulation of commerce, it is reasonable to expect to find on the face of the law or from its essential nature that it is a regulation of commerce with foreign nations or among the several states, or with the Indian tribes. If not so limited, it is in excess of the power of Congress."

The evil intended to be remedied by the Act was the business of transporting women for gain for purposes of prostitution or debauchery. That is, for the purpose of engaging in the business of debauchery, or engaging in the business of prostitution. The defendant had the right to pay the railroad fare Lola Norris to Nevada, she traveling as his friend. He had the right to pay her railroad

fare, except by doing so he was helping or aiding her in some *unlawful enterprise or business* prohibited by and named in the statute. The right to pay a woman's car fare on a railroad train does not depend upon her education or moral principles, her honesty or her integrity. The purpose for which such fare was paid must have been to enable the woman to engage in the *business* of prostitution or the *business* of debauchery in a commercial sense. Suppose that defendant had paid the fare of Lola Norris to go from Sacramento to Reno for the purpose of aiding in a prize fight or other crime, could it be claimed that he was engaged in interstate commerce? And yet such would be deemed an immoral purpose. Who shall say that any single act or thing is of itself immoral? There is no exact definition of the word, and evidently the different members of the Court have different ideas as to its meaning. Suppose instead of using the words "or for any other immoral purpose" the statute had read "or for any other wrong purpose", would it be contended that this Court can hold the defendant criminally liable because, forsooth, according to its view an act might be wrong? A defendant surely cannot be held liable for engaging in interstate commerce by reason of transporting a person, unless such transportation is for some unlawful commercial purpose.

One charged with a crime has the right to be told in the plain language of the indictment what acts the Government claims he did. We can understand

the charge a defendant is required to meet when he is told that he transported a woman from one state to another for the purpose of having her engage in prostitution or in debauchery as the word is understood; but when we are told that he transported a woman "for an immoral purpose" we cannot understand what he has to meet by such charge. Can it be supposed that the framers of our Constitution, when they gave Congress power to regulate interstate commerce, had any idea that taking a lover from one State to another was commerce in the sense in which it was used? To say that such act is interstate commerce seems, with all deference, if not absurd, at least difficult of comprehension. What commodities are being exchanged? Who is buying or selling, and what is being bought or sold? If defendant might be considered as paying the freight charges on the girl, to whom was the freight consigned, and who is to pay the defendant for it? Was he engaged in commerce when he sold nothing and intended to sell nothing—when he exchanged no commodity and intended to exchange none?

If this Act is applicable to this case, then the person who pays for a railroad ticket from Sacramento to Reno for a virtuous female whose intention is to enter into an agreement by which she is to become his concubine, was engaged in interstate commerce while purchasing the ticket.

The Act Has Been Interpreted in Accordance With the Views Herein Expressed by the Executive Officers of the United States, and by the Judiciary.

On July 17, 1912, Charles C. Houpt, U. S. District Attorney for Minneapolis, wrote a letter to Attorney-General Wickersham in St. Paul, in which he said as follows:

"Department of Justice
Office of United States Attorney,
District of Minnesota.
St. Paul, July 7, 1912.

"The Attorney General,
Washington, D. C.

"Sir:

"I have the honor to submit for your direction and advice the facts in a case which is claimed to come within the purview of the Act of June 25, 1910, called the 'White Slave Traffic Act'.

"One Ada Cox, twenty-four years of age, residing at Chicago, Ill., came to St. Paul in October, 1910, at the solicitation and expense of one Rufas Edwards. On her arrival here, Edwards met her at the station. They passed the day riding, lunching and drinking, and the night following at a house of assignation in the city of Minneapolis. She remained there three days with Edwards and then returned to Chicago. In June, 1911, she repeated the visit under like circumstances.

"June 12, 1912, Miss Cox applied to me for a warrant of arrest of Edwards under the above named act. At that time she made a statement of her connection with Edwards which was taken in shorthand by Mr. J. M. Dickey, Assistant United States Attorney, in his office, and by him written out.

"A copy of this statement is enclosed.

"Careful consideration of the facts and cir-

cumstances as related by Miss Cox fail to convince me that her case came within the spirit and intent of the Mann Act. *The element of traffic is entirely absent from this transaction.* It is not a case of prostitution or debauchery and the general words 'or other immoral practice', should be qualified by the particular preceding words and be read in the light of the rule of *Ejusdem Generis.* This view of the statute is the more reasonable when considered in connection with Section 8 where Congress employs the terms 'slave' and 'Traffic' as indicative of its purpose to suppress certain forms of abominable practices connected with the degradation of women for gain.

"Since I have hesitated about having a warrant issued for the arrest of Edwards, Miss Cox has *elisted certain club women in her behalf who are insisting on the arrest being made.*

"As this case is typical of many others that are liable to be brought to this office I deemed it proper to submit the facts to ascertain if my interpretation of the statute is in harmony with the departmental construction.

Very respectfully yours,

(Signed) CHAS. C. HOUPT,
United States Attorney."

Attorney-General Wickersham replied to this letter:

"Department of Justice.
Washington, D. C.
"July 23, 1912.

"United States Attorney,
St. Paul, Minn.

"I have received your letter of the 17th instant concerning a statement of the facts with reference to the complaint of one Ada Cox, against one Rufas Edwards of an alleged violation of the White Slave Traffic Act.

"I agree with your conclusion that the facts and circumstances set forth in your letter and its enclosures do not bring the matter within the true intent of the White Slave Traffic Act, and that no prosecution against Edwards should be instituted in the Federal Courts unless other and different facts are presented to you.

"Respectfully,

(Signed) GEO. W. WICKERSHAM,
Attorney General."

And the same opinion was given by the Assistant Attorney-General, Harr, in the case of *Hoke v. United States,* 227 U. S., 57 L. Ed. 524. He uses this language:

"Section 8 of the Act provides that it shall be known and referred to as the 'White-Slave Traffic Act'. This title, the provisions of sections 2, 3, and 4 of the Act with reference not only to the transportation in interstate and foreign commerce of women and girls for the purpose of prostitution or debauchery, or any other immoral purpose, but to persuading, inducing, enticing, and coercing any woman or girl to go and be transported from one place to another in interstate of foreign commerce for any such purpose, and the fact that the Federal supervision of alien women and girls and of persons keeping or harboring them in homes of prostitution or for any other immoral purpose provided for by section 6 of the Act, is said to be established in pursuance of and for the purpose of carrying out the international agreement for the suppression of the white-slave traffic signed at Paris on May 18, 1904, and which was adhered to by the United States on June 6, 1908, *all indicate that the underlying purpose of the act is the suppression of such traffic* in women and girls so far as it comes within the

jurisdiction of Congress over interstate and foreign commerce.

"This purpose was also plainly stated by the committees of Congress in recommending the passage of the bill. * * *"

Again (p. 15):

"*The act is carefully confined to the evil intended to be remedied—the exploitation of women and girls for private gain—the white-slave traffic. It reaches procurers and panderers and those engaged in conducting immoral houses, shows, etc., who, treating women and girls as subjects of barter and gain,* transport or cause them to be transported, or facilitate their transportation, from one state to another, or to a foreign country, for immoral purposes.

"The act does not penalize either the voluntary going or coming of women for the purpose of prostitution, nor the act of one who, for charitable or philanthropic reasons, extends aid to an unfortunate female by purchasing transportation for her. Nor would a common carrier or its agents be guilty of violating the act simply by transporting a woman or girl who may intend to engage in prostitution. Only he who does any of the acts mentioned in the statute with the intent and purpose that the woman or girl involved *shall engage in a life of prostitution or other immoral practice,* is within the letter and spirit of the law. This appears not only from the language used with reference to purpose and intent, but from the insertion of the word 'knowingly' in the several provisions of the act."

Directly after the case at bar was decided, U. S. District Judge John Pollack of Kansas, in the case of *People v. Lee Baker,* in September, 1913, held

that the Act did not apply to a case like this. He said:

> "Under this law, as I construe it, the commercial feature must be proved. It was not the aim of Congress to prevent a personal escapade of any man. If the government cannot prove that this man took the girl to another state for a commercial purpose, I shall instruct the jury to acquit him."

This ruling of Judge Pollack's has been quoted in law journals and in various leading periodicals of the United States with approval, and as being the true interpretation of the Mann Act (see Judge Pollack's opinion of the law in full, Opening Brief, pp. 76-83).

In *Hoke v. United States,* 227 U. S. 308, 322, the Supreme Court said:

> "Our dual form of government has its perplexities, State and Nation having different spheres of jurisdiction, as we have said, but it must be kept in mind that we are one people; and the powers reserved to the States and those conferred on the Nation are adapted to be exercised, whether independently or concurrently, to promote the general welfare, material and moral. This is the effect of the decisions, and surely if the facility of interstate transportation can be taken away from the demoralization of the lotteries, the debasement of obscene literature, the contagion of diseased cattle or persons, the impurity of food and drugs, the like facility can be taken away from *the systematic enticement to and the enslavement in prostitution and debauchery of women, and, more insistently, of girls.*"

The view of the Act above expressed is also in line with the construction which has been given similar Acts by State Courts. Thus, in *People ex rel. Howey v. Warden, etc.,* 207 N. Y. 354 (101 N. Y. Rep. 167), the Court of Appeals of the State of New York held that a charge of violating a statute of that State, providing that one is guilty of abduction who "entices an unmarried female * * * into a house of ill-fame or of assignation, or elsewhere, for the purposes of prostitution *or sexual intercourse*" was not supported by evidence of enticing a woman to an unfrequented roadside for the purpose of having a single act of illicit intercourse with her, but that the test of guilt was "whether she is enticed into some place for purposes of prostitution, as generally understood, rather than for a single act of intercourse". See also *Miller v. State,* 121 Ind. 294.

The construction herein given the Act by the reports of the Committees upon the bill, by the debates in Congress, by the executive officers of the United States, and by judicial expression is in accordance with the principle that the Government and the Courts will never hold a subject guilty of a crime unless such crime is defined in clear and unmistakable language.

In *Todd v. the United States,* 154 U. S. 39, L. Ed. 982, it is said:

> "It is axiomatic that statutes creating and defining crimes cannot be extended by intendment, and that no act, however wrongful, can

> be punished under a statute unless clearly within its terms. 'There can be no constructive offenses, and before a man can be punished, his case must be plainly and unmistakably within the statute'."

In *United States v. Eaton,* 144 U. S. 36; L. Ed. 591 the Court, in considering whether or not the defendant had violated certain provisions of the Act of Congress in regard to the sale of oleomargarine, said:

> "It is necessary that a sufficient statutory authority should exist for declaring any Act or omission a criminal offense; and we do not think that the statutory authority in the present case is sufficient. If Congress intended to make it an offense for wholesale dealers in oleomargarine to omit to keep books and render returns as required by regulations to be made by the Commissioner of Internal Revenue, it would have done so distinctly, in connection with an enactment such as that above recited."

In *Ex Parte McNulty,* 77 Cal. 164, it was held that it was not within the power of the legislature to punish the defendant for what was termed "unprofessional conduct" by a board of medical examiners. Justice McFarland, who wrote the opinion in his usual forcible style, said:

> "It would be vain to inquire what intent lurked in the minds of the persons who happened to be members of the legislature when the act was passed. It certainly would be a forced thing to imagine their intent to be that a man should lose his liberty for the violation of any vague, undefined notion of unprofessional conduct, which might, after the fact, be entertained by certain individuals constituting

a board of examiners. At all events, the question whether or not the conduct in question is made a crime must be determined from the language used in the statute, and we find there nothing that declares such conduct to be a criminal offense. * * * Constructive crimes—crimes built up by courts with the aid of inference, implication, and strained interpretation—are repugnant to the spirit and letter of English and American criminal law.

THIRD: HAS THE ACT BEEN HELD TO APPLY TO A CASE LIKE THIS BY THE SUPREME COURT OF THE UNITED STATES?

We have carefully gone through the cases, and we claim that the Supreme Court of the United States has not sustained the doctrine of this case, and that this decision as an interpretation of the Act, stands alone, with one exception which I will further call attention to before completing my argument.

The first case we find is *United States v. Westman* (182 Fed. Rep. 1017). In that case the Court expressly stated that the indictment was challenged upon two grounds; first, that the Act is an unwarrantable attempt on the part of Congress to exercise police powers which belong to the States, and, second, that transporting persons from one State to another is not a subject of commerce.

Judge Wolverton, the District Judge who wrote the opinion, merely held that the indictment was sufficient as against these two objections. It is not stated in the opinion what the immoral purpose was for

which the women were transported. But as there were two of them, Myrtle Westman and Connie Bledsoe, it is evident that the case is not like the one at bar. The defendant was evidently charged with transporting them for the purpose of prostitution. There were nine counts in the indictment, but as I have not the record before me I am unable to state the contents of the indictment, and it does not appear from the report.

The next case is *Hoke v. United States* (227 U. S. 57; L. Ed. 523). The indictment in that case was against a woman, Effie Hoke, and her accomplice, one Economides, who is alleged to have aided her in inducing one Annette Baden and another woman, whose name is not given, to go from New Orleans, in the State of Louisiana, to Beaumont, in the State of Texas, "for the purpose of engaging in the practice of prostitution"—one woman procuring another woman to travel to another State for the purpose of prostitution. It is easily seen that the point in this case did not arise. Therefore, if anything was said in the opinion of Justice McKenna on the question outside of the point at issue, it was mere dicta. It was in this case that Assistant Attorney General Harr used the language in his brief heretofore quoted. There was but one point discussed in the case—that is, the power of Congress under the commerce clause of the Constitution. The Court in the opinion said:

> "Commerce among the states, we have said, consists of intercourse and traffic between their citizens, and includes the transportation of persons and property."

With this language we have no fault to find. It is said in the opinion that the Act condemns transportation "for the imomral purposes mentioned". This defendant was not convicted or found guilty of transportation for one of the immoral purposes mentioned in the statute. It is not my contention that if the indictment had charged the defendant with one of the immoral purposes mentioned in the statute, it would be void. The opinion further states:

> "Our dual form of government has its perplexities, state and nation having different spheres of jurisdiction, as we have said; but it must be kept in mind that we are one people; and the powers reserved to the states and those conferred on the nation are adapted to be exercised whether independently or concurrently to promote the general welfare, material and moral. This is the effect of the decisions; and surely, if the facility of interstate transportation can be taken away from the demoralization of lotteries, the debasement of obscene literature, the contagion of diseased cattle or persons, the impurity of food and drugs, the like facility can be taken away from the *systematic* enticement *to* and the *enslavement in prostitution and debauchery* of women, and, more insistently, of girls."

It will be noticed that the Court again repeats the words "prostitution and debauchery", which are the immoral purposes mentioned in the statute. The defendant in that case, Effie Hoke, was the keeper of a house of prostitution at Beaumont, and the women transported were prostitutes. There is not a word in the case lending any countenance to

the construction given the statute in the case at bar. Defendant in the case at bar was not taking prostitutes to a house of prostitution.

The next case is *Athanasaw v. United States* (227 U. S. 57, L. Ed. 528). This case but followed the Hoke case, the opinion being written by the same Judge. The charge in the latter case was that defendant transported "a girl by the name of Agnes Couch from Atlanta, Georgia, to Tampa, Florida", for the purpose of debauchery and "to give herself up to debauchery". The Court held that debauchery, as named in the statute, had a well-known meaning; that it means "an excessive indulgence of the body; licentiousness, drunkenness, corruption of innocence; taking up of vicious habits". And the Court said:

> "The term debauchery as used in this statute has an idea of sexual immorality, as quoted in this section";

and further:

> "It is true that the Court did not give to the word debauchery or to the purpose of the statute, the limited definition and extent contended for by defendants, nor did the Court make the guilt of the defendants to depend upon having the *intent themselves to debauch the girl,* or to intend that someone else should do so. In the view of the Court, the statute had a more comprehensive prohibition, and was designed to reach acts which might ultimately lead to that phase of debauchery which consisted in sexual actions. The general expressions of the Court, however, were qualified to meet and not go beyond the conduct of the

> defendants. The Court put it to the jury to consider whether the employment to which the defendants called the girl and the influences with which they surrounded her tended to induce her to give herself up to a *condition of debauchery,* which eventually and naturally would lead to a course of immorality sexually."

When the record in the latter case is examined it will be seen that an innocent girl, through an advertisement, was lured to sign a contract, and leave her native town in Georgia and go to Tampa, Florida, and enter a baudy theatre or dance house, which was shown to be a place of debauchery. The Court concludes its opinion by saying:

> "The plan might have succeeded if the coarse precipitancy of one of the defendants and the ribaldry of the habitues of the place had not shocked the modesty of the girl. And granting the testimony to be true, of which the jury was the judge, the employment to which she was enticed was an efficient school of debauchery of the special immorality which the defendants contend the statute was designed to cover."

The next case is *Bennett v. U. S.* (227 U. S. 57, L. Ed. 531), which follows the two cases just cited, the opinion being written by the same judge. In the latter case, the defendant was indicted for transporting two girls, Opal Clark and Ella Parks. The opinion does not state the purpose as charged in the indictment, as the question seems not to have been before the Court, and merely says that the demurrer raised the question as to the consti-

tutionality of the statute, and concludes by saying that in the former cases it had held the statute constitutional.

The next case is *Harris et al. v. U. S.* (227 U. S. 57, L. Ed. 534). In that case, the defendants (two women) were indicted "for transporting and causing to be transported, in interstate commerce, certain named women for the purposes of prostitution." The opinion by the same judge merely held that the Court had already discussed the statute, and that there was no variance between the allegations and proof, and that the evidence was sufficient to sustain the verdict.

The next case is *Suslak v. U. S.,* 213 Fed. Rep. 915. That case was decided in the Circuit Court of Appeals of the Ninth Circuit, in which two of the judges now sitting in this case concurred. The indictment contained twelve counts, all tending to show that the defendant transported, or aided in the transportation of, Grace Beal from Spokane, Washington, to Butte, Montana, for the purpose of prostitution. She not only appears to have been transported for such purposes, but she afterwards plied her vocation in Butte, Montana, carrying out the purposes for which she was transported. On examining the case it will be seen that there is no question as to the defendant's intention to profit or make money by transporting the woman to Butte, or, as one of the witnesses said, "so that he could make a fortune out of her".

The case, therefore, does not decide the question at bar, and there is nothing in the language there used in conflict with our contention in this case. The Court there said:

> "Moreover, the denunciation of the law is not against transportation for the purpose of debauchment, but for the purposes of debauchery. In the Century Dictionary debauchery is defined as: 'Excessive indulgence in sensual pleasures of any kind; gluttony; intemperance; sexual immorality; unlawful indulgence of lust.' So Webster, while giving, as one of the meanings, seduction from virtue, duty or allegiance, also defines the term as: 'Excessive indulgence of the appetites, especially excessive indulgence of lust; intemperance; sensuality; habitual lewdness.' It was in this sense of *unlawful indulgence of lust* in which the term was intended to be used in the act."

If, as stated in the case last cited, the law is not against *transportation for debauchery,* it cannot apply to this case.

The principal case relied upon by the Government is *Johnson v. United States,* Fed. Rep. Vol. 215, No. 4, Oct., 1914. That case is not binding upon this Court and will commend itself only in so far as its reasoning convinces. This Court well knows that a decision is often merely the opinion of the judge who writes it, appearing on its face sufficiently plausible that it is often concurred in by the other members of the Court without a full and careful study of the case. The case is apparently in conflict with the views I have endeavored to express in this argument and with

the views expressed in *Suslak v. United States,* and is not easily understood. It certainly is not, in my opinion, well reasoned in respect to the apparent ruling therein contained. The Court in discussing the words "Other immoral purpose" says that they

> *"are words of such generality that a criminal conviction thereunder could not be tolerated whose purpose was any and every sort of immorality."*

With this statement I agree, and it is in line with the authorities and reasoning applied to criminal statutes.

The Court, however, further says that the words must be limited "to that genus of which the preceding descriptions are species"; and further, that

> *"Prostitution, the first species, involves the financial element."*

Then the Court, in speaking of the second species —debauchery—says that

> *"No financial element is necessarily involved in sexual debauchery,"*

and concludes that Johnson, if he paid the transportation of the girl from Pittsburgh to Chicago for the immoral purpose of having sexual intercourse with her, was guilty of the charge of violating the statute known as the "White Slave Traffic Act".

The Court said that the evidence failed to sustain the charge as to transportation for the purposes of prostitution. It was not pretended that the girl

was transported for the purpose of debauchery, for the evidence shows, and the Court states, that she was a prostitute and Johnson first met her in a brothel. Therefore, Johnson did not transport her for the purpose of prostitution nor for the purpose of debauchery, because he could not debauch a prostitute, but, for a purpose not named in the statute. The Court seems to hold that "sexual intercourse is of the genus of which prostitution and debauchery are species". It seems to me, with all due deference to the Court, difficult to understand from reading the Act how it can be understood therefrom that "sexual intercourse" was the "genus" the various species of which, although not named, are included in the words "other immoral purpose". The words "sexual intercourse" are not mentioned in the Act. The genus was a mere judicial conclusion, for while "prostitution" and "debauchery" are named, no genus is named in this Act other than the "White Slave Traffic Act".

Prostitution is defined by law writers as the "common lewdness of a woman for gain"; and debauchery as "Excessive indulgence in sensual pleasures of any kind, gluttony, intemperance, sexual immorality, unlawful indulgence of lust".

There is no statement to the effect that Johnson transported the girl for the purpose of engaging in or carrying on the business of debauchery. The Court cites Hoke's case (supra) but it has before been shown (in my humble opinion) that it con-

tains no such diction. It further cites Athanasaw's case (supra) and says it

> "Teaches that the providing of interstate transportation for the mere purpose of attempting to lead a chaste girl into unchastity is a felony without proof that the defendant intended to be the debaucher or that he intended to profit by the girl's hire if she should become a prostitute."

I may be dull of apprehension but that case does not so teach me. I earnestly ask this Court to examine the case and see if in this Court's opinion it contains any such doctrine. The charge in that case was "for the purpose of debauchery" or "to give herself up to debauchery". The girl answered an advertisement for chorus girls and was transported from Suwanee, Georgia, to Tampa, Florida, to appear at the Imperial Theatre at $20 per week. The theatre was operated by defendants and the girl was hired and transported by their agent. The girl testified that one of the defendants asked her

> "To talk to the boys and make a hit, and get all the *money I could out of them.* His room was next to mine and he told me that he was coming in my room that night and sleep with me."

She further testified that she was told she would "like it when she got broke in".

The trial Court in that case, in instructing the jury, said:

> "The intent and purpose of the defendants at the time of furnishing this transportation for Agnes Couch is the very gist of the ques-

> tion in this case. Did they intend to induce or entice or influence her to give *herself up to debauchery?* It makes no difference whether the *profits which would be made by the defendants* came from the sale of liquor or other immoral purpose."

The Supreme Court approved of the instructions given by the trial Court and said that the Court by its instructions did not

> "make the guilt of the defendants to depend upon having the intent themselves to debauch the girl."

The fact that the defendants in the Athanasaw case were to profit by the girl's earnings is apparent from the entire case. In fact it was not questioned in the Supreme Court. How then can it be that the case teaches that the statute is violated without proof that defendant "expected to profit by the girl's hire"?

The cases cited by the Circuit Court of Appeals in the Johnson case do not support the broad statements therein contained. The reasoning is not (to my mind) convincing. How did the Court arrive at the conclusion that the "genus" to which the words "other immoral purpose" are to be applied is "sexual intercourse"? How did it arrive at the conclusion that paying a woman's fare from one State to another by a man whose mistress she is for no purpose of profit or gain, but at a financial loss to the party paying the fare, is "interstate commerce"? Did such interpretation of the Constitution ever enter the mind of the great men who

took part in framing it? Did the framers of the Constitution intend that Congress should have power to punish every man who might travel from one State to another with his mistress? Was that the "regulation of commerce between the States" that was in mind at the time? It does not seem that such is the right and logical construction of the Act. It seems plain if such construction should prevail that the Act should be entitled "An Act to prevent unlawful sexual intercourse between the inhabitants of the States when they travel from one State to another".

In the case at bar there is no evidence in the record that sexual intercourse was unlawful either in California or in Nevada.

There Is No Evidence in This Record Sufficient to Raise Even a Presumption That the Defendant Transported Lola Norris for the Purpose of Sexual Intercourse.

The girl was the only witness as to the intent and she testified that the object was to escape from the notoriety and threatened arrest and prosecution at Sacramento. She further testified that mistress or concubine or sexual intercourse was never mentioned by either defendant or herself. According to her testimony she was a virgin and had never had sexual intercourse with defendant or any other man. The law in its mercy never presumes guilt, but on the contrary, delights in freeing those brought before it if the evidence does not clearly

show that every material element constituting a crime has been proven. In the Johnson case (supra) the Court expressly stated that the fact that Johnson telegraphed seventy-five dollars ($75) to the girl at Pittsburgh telling her to go to Chicago at Gresham's and wait for him, that she went there and shortly thereafter had sexual intercourse with Johnson, tended to raise a suspicion

> *"that the purpose of the transportation was sexual intercourse. This evidence also is consistent with the theory that defendant had no intent to have sexual intercourse at the time he aided the girl in her travels. And the presumption of innocence would require the adoption of this theory if here the evidence stopped."*

This seems to me disposes of this case. Defendant had never had sexual intercourse with the girl, had never mentioned the subject to her, he never mentioned mistress or concubine to her, he does not appear to have mentioned sexual intercourse to her, when she of her own volition climbed up to the upper berth and slept with him in the Pullman while going to Reno. This is perfectly consistent with the theory of defendant's innocence.

In the Johnson case the Court held that the evidence did not thus stop but that it further showed that defendant had been in the habit of indulging in promiscuous sexual intercourse, that the girl was a prostitute, that defendant met her several years before in a brothel, that throughout their acquaintance they had always maintained

sexual intercourse and had frequently traveled about the country, always indulging in sexual intercourse. Then the Court said:

> "This additional evidence furnished a basis from which the jury could justifiably draw the inference of fact that when the defendant furnished the transportation he did so for the purpose of having sexual intercourse with the girl after their arrival in Chicago."

Here there is no such evidence. Defendant was not in the habit of having promiscuous sexual intercourse, the girl was not a prostitute, they had never had sexual intercourse with each other. Not only this, but defendant did not purchase the transportation.

The Court in the Johnson case held that the evidence was not sufficient to sustain the prostitution counts. That the telephone and telegraph messages contained no suggestion of prostitution, and that the fact that several days after the girl arrived in Chicago, defendant supplied her money with which to open and conduct a brothel was not sufficient. The Court said:

> "This fact might lead to a suspicion that defendant, when providing transportation, had the intent to aid her subsequently in her profession, *but criminal convictions cannot be allowed to rest on suspicion.*"

In the case at bar, the evidence at most could only be claimed to raise a suspicion of the intent to have sexual intercourse, and this because of the fact that the defendant is a male and the transportation was of a female.

The Court Erred in Allowing the Prosecuting Attorneys to Constantly Comment.

in their argument to the jury that defendant had failed to deny many material parts of the testimony while on the stand, and in instructing the jury that such failure to testify was a circumstance which the jury might consider indicating the defendant's guilt. This point is fully discussed in the opening brief.